

Confidence Building Measures – Prospects for going forward in the South China Sea

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Current Situation

- Generally tensions have increased in the SCS over past 1- 2 years
- Incidents occurring regularly between vessels of claimant countries
- Fortunately no escalation so far
- But risks of an unfortunate incident and escalation may be increasing



Action required at 2 levels:

- Moves towards a more cooperative approach to managing the sea and its resources.
- Development of operational maritime confidence and security building measures (MCSBMs)



Need for Effective Cooperative Regimes

- Obligation to cooperate in UNCLOS Part IX and DOC
- Shipping Traffic increasing
- Resources pressures (living and non-living)
- Environmental degradation
- Avoiding a “tragedy of the commons”



DOC Cooperative Activities

- marine environmental protection;
- marine scientific research;
- safety of navigation and communication at sea;
- search and rescue operations; and
- combating national crime, including, but not limited to, trafficking in illegal drugs, piracy and armed robbery at sea, and illegal traffic in arms.



Cooperation and effective regimes lacking due to:

- Sovereignty Disputes (no agreement within ASEAN)
- Lack of Agreed maritime boundaries
- Commitment to sovereignty
- Search for “fences in the sea”
- Regional geography
- Lack of support for relevant international regimes (i.e. SAR , SUA)
- Lack of capacity in some bordering countries



Why are straight line maritime boundaries impossible to achieve?

- Sovereignty Disputes
- Excessive territorial sea straight baselines
- Geography – several bordering states
- No areas of high seas (and certainly no “international waters”)
- Multiple tri-points required requiring trilateral (or even multi-lateral) agreement
- Determining which features qualify as “islands” generating a full set of maritime zones



Guidelines for developing a Code of Conduct

- “5. Initial activities to be undertaken under the ambit of the DOC should be confidence-building measures. “
- Note no mention of cooperation – putting CBMs first
- But cooperation has always been regarded as a CBM



KEY QUESTION

- Have the “means” (i.e. the Code of Conduct and dispute resolution) become more important than the “ends” (i.e. effective management of the SCS and its resources)?



Resolving the Disputes

- Sovereignty disputes cannot be resolved on a multilateral basis
- ASEAN cannot take a position on the sovereignty disputes with China – any agreement possible within ASEAN?
- Resolution of sovereignty disputes (and maritime boundaries) a matter of politics not of the law



CBMs

- Resolving different views of rights and duties in an EEZ
- Incident at Sea Agreements - probably unlikely to be effective?
- Submarine proliferation – measures required to reduce risks of submarine incidents and enhance safety
- Demilitarising the South China Sea – use of coast guards



CONCLUSIONS

- First priority should be work towards a cooperative management regime.
- Changed Mindsets - common interests rather than self-interest
- A more robust regional Track 1 organization required to have oversight of cooperation.
- Operational MCSBMs are another priority.

